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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 161 of 2018

Manish Avasthi Appellant

Versus

State of Uttarakhand Respondent

Present:-

Mr. Lokendra Dobhal, Advocate for the appellant.

Mr. B.N. Molakhi, Deputy Advocate General for the State.

Criminal Appeal No. 205 of 2018

Ashish Bijalwan and others Appellants

Versus

State of Uttarakhand Respondent

Present:-

Ms. Prabha Naithani, Advocate for the appellants.

Mr. B.N. Molakhi, Deputy Advocate General for the State.

Government Appeal No. 71 of 2018

State of Uttarakhand Appellant

Versus

Vijay Shankar Nautiyal Respondent

Present:-

Mr. B.N. Molakhi, Deputy Advocate General for the appellant.

Ms. Prabha Naithani, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Per: Hon'ble Ravindra Maithani, J.

Since all these appeals arise from one and the same sessions trial, they are heard together and being decided by this common judgment.

2. Criminal Appeal No. 161 of 2018 has been filed by the appellant Manish Avasthi against the judgment and order dated 21.05.2018 passed in Sessions Trial No. 04 of 2017, by the learned Sessions Judge, District Uttarkashi, whereby the appellant Manish Avasthi has been convicted under Sections 376-D read with 34 IPC, 323 read with 34 IPC and 506 IPC and sentenced as under:-

- (i) Under Section 376-D read with 34 IPC – rigorous imprisonment for a period of 20 years and a fine of Rs. 25,000/- and in default of payment of fine, to undergo further imprisonment for a period of one year.
- (ii) Under Section 323 read with 34 IPC – rigorous imprisonment for a period of six months.
- (iii) Under Section 506 IPC – rigorous imprisonment for a period of one year.

3. Criminal Appeal No. 205 of 2018 has been filed by the appellants Ashish Bijalwan, Ajay Bhatt and Vijay Shankar Nautiyal against the judgment and order dated 21.05.2018 passed in Sessions Trial No. 04 of 2017, by the learned Sessions Judge, District Uttarkashi, whereby the appellant Ashish Bijalwan has been convicted under Sections 376-D read with 34 IPC, 342 IPC, 323 read with 34 IPC and Section 506 IPC; the appellant Ajay Bhatt has been convicted under Sections 376-D read with 34 IPC, 323 read with 34 IPC and 506 IPC; whereas appellant Vijay Shankar Nautiyal has been convicted

under Section 323 read with 34 IPC. All these appellants have been awarded sentence as under:-

Appellant Ashish Bijalwan

- (i) Under Section 376-D read with 34 IPC – rigorous imprisonment for a period of 20 years and a fine of Rs. 25,000/- and in default of payment of fine, to undergo further imprisonment for a period of one year.
- (ii) Under Section 342 IPC - rigorous imprisonment for a period of six months.
- (iii) Under Section 323 read with 34 IPC – rigorous imprisonment for a period of six months.
- (iv) Under Section 506 IPC – rigorous imprisonment for a period of one year.

Appellant Ajay Bhatt

- (i) Under Section 376-D read with 34 IPC – rigorous imprisonment for a period of 20 years and a fine of Rs. 25,000/- and in default of payment of fine, to undergo further imprisonment for a period of one year.
- (ii) Under Section 323 read with 34 IPC – rigorous imprisonment for a period of six months.

- (iii) Under Section 506 IPC – rigorous imprisonment for a period of one year.

Appellant Vijay Shankar Nautiyal

- (i) Under Section 323 read with 34 IPC – rigorous imprisonment for a period of six months.

4. Government Appeal No. 71 of 2018 has been filed by the State against acquittal of accused Vijay Shankar Nautiyal for the offences punishable under Sections 376-D read with 34, 342 and 506 IPC, recorded on 21.05.2018 in Sessions Trial No. 04 of 2017, Ashish Bijalwan and others v. State, by the learned Sessions Judge, Uttarkashi.

5. According to the prosecution case, on 03.03.2017, PW 2, the victim had gone to stay in her friend PW 5's house. On the same day, at 09:30 p.m., she had gone to deliver her phone to her another friend PW 3. They were together walking across the bank of a river when the appellants came there. They did *maar-peet* with PW 3. Thereafter, the appellant Ajay Bhatt dragged PW 2, the victim at a distance and raped her. The victim raised an alarm. She was scared. Thereafter, the appellants Manish Avasthi and Ashish Bijalwan came close to her. They wanted to rape her. But, meanwhile, some person raised an alarm and pelted stones, due to which PW 2, the victim was released for a while. She ran towards the road, but again she was overpowered by the appellants Manish Avasthi and Ashish Bijalwan, who took her on the road and raped one after another. Thereafter, they took her in a village, where the appellant Ashis Bijalwan again raped

her. Next day morning, she was dropped. She returned to the house of her friend PW 5 and a report was lodged, based on which Case Crime No. 21 of 2017, under Sections 376-D, 342, 323, 506, 34 IPC was lodged at Police Station Kotwali Uttarkashi. The chik FIR is Ex. A-2. The extract of the General Diary entry is Ex. A-3. The victim was medically examined on the same day at 06:00 p.m. at District Hospital, Uttarkashi. According to the doctor, “the findings are not suggestive of rape, the victim is habitual to sexual intercourse”. On 06.03.2017, the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, 1973 (“the Code”). She has been categorical as to who amongst the appellants had done what on the date of incident and how she was raped. The appellants were arrested. Some of the articles recovered from the victim were sent for the forensic examination. The Investigating Officer prepared the site plans of the place of incident, which are Ex. A-9 and A-10. Forensic Science Laboratory report was also received and after conducting the investigation, charge sheet was submitted against the appellants under Sections 376-D, 342, 323, 506, 34 IPC.

6. On 20.06.2017, the charges under Sections 376-D, 342, 323, 506, 34 IPC were framed against the appellants. The appellants denied the charges and claimed trial.

7. In order to prove its case, the prosecution examined as many as eight witnesses, namely, PW 1, mother of the victim, PW 2, the victim, PW 3, the friend of the victim, PW 4 Maniram Nautiyal, PW 5, the friend of the victim, PW 6 HCP Sunil Kumar, PW 7 Dr. Akansha Badhani and PW 8 SI Vinod Prasad Thapliyal.

8. After the prosecution evidence, the appellants were examined under Section 313 of the Code. According to them, they have been falsely implicated and the witnesses have given false statements.

9. After having heard the learned counsel for the parties, the court convicted the appellants and sentenced as stated hereinbefore. Aggrieved by it, the appellants as well as the State have preferred these appeals.

10. Heard learned counsel for the parties and perused the record.

11. Learned counsel for the appellants Ashish Bijalwan, Ajay Bhatt and Vijay Shankar Nautiyal submit that the prosecution has not been able to prove its case beyond reasonable doubt; the testimony of PW 2, the victim is not reliable; it does not inspire confidence. The following points have also been raised on behalf of the appellants:-

- (i) There is no clear proof of presence and participation of appellants, individually.
- (ii) The prosecution has not produced any independent witness, CCTV footages, electronic evidence or location evidence for establishing the presence of the appellants.
- (iii) The identity of the appellants is uncertain.
- (iv) No scientific evidence directly connects the appellants with the alleged offence.

- (v) The allegations are vague and omnibus in nature.
- (vi) Forensic evidence does not corroborate the allegations against the appellants.
- (vii) There are a lot of contradictions in the statements of the witnesses. Reference has been made to various parts of the statements of the witnesses.

12. In support of their contentions, learned counsel for the appellants have placed reliance on the principles of law as laid down in the case of *Rajendra and others v. State of Uttarakhand*, 2026 SCC OnLine SC 367, *Ashok Kumar v. State of Uttarakhand* (Criminal Appeal No. 427 of 2013, Neutral Citation No. 2019:UHC:1189-DB), *Raja and others v. State of Karnataka*, (2016) 10 SCC 506, *Pradeep Kumar v. Union Administration, Chandigarh*, (2007) 1 SCC (Cri) 41; *Santosh Prasad alias Santosh Kumar v. State of Bihar*, (2020) 3 SCC 443 and *Mohit Tyagi v. State of Uttarakhand* (Criminal Appeal No. 294 of 2020).

13. In the case of *Rajendra (supra)*, there was a delay of three months in lodging of the FIR and the victim did not disclose the incident to her friends, family or even her husband. It was revealed to some other woman and there was no medical evidence either. The Hon'ble Supreme Court in that case referred to the principle of law as laid down in the case of *Vijayan v. State of Kerala*, (2008) 14 SCC 763 (in which case the FIR was lodged after seven months of the incident and there was no other evidence available), and held that the

matter on record does not clearly establish the guilt of the accused person.

14. In the case of Ashok Kumar (*supra*), the FIR was delayed by two months and according to the prosecutrix, she was given threats that she should not reveal the incident to anyone. But, this Court held that the prosecutrix could not give any credible explanation either to delay or to the so called threat perceptions at the hands of the appellants in that case, who were blackmailing her. Her medical examination also did not support the case of the prosecution and, accordingly, the Court found that the prosecution was unable to prove its case beyond reasonable doubt.

15. In the case of Raja (*supra*), the Hon'ble Supreme Court has placed reliance on the principle of law as laid down in the case of *Raju v. State of M.P.*, (2008) 15 SCC 133 and held as follows:-

“34. This Court in *Raju* [*Raju v. State of M.P.*, (2008) 15 SCC 133 : (2009) 3 SCC (Cri) 751] , while reiterating that the evidence of the prosecutrix in cases of rape, molestation and other physical outrages is to be construed to be that of an injured witness so much so that no corroboration is necessary, ruled that an accused must also be protected against the possibility of false implication. It was underlined that the testimony of the victim in such cases, though commands great weight but the same, cannot necessarily be universally and mechanically accepted to be free in all circumstances from embellishment and exaggeration.”

16. In the case of Pradeep Kumar (*supra*), the Hon'ble Supreme Court observed as to what is necessary to prove the offence of gang rape. In para 10 and 11, the Hon'ble Supreme Court observed as under:-

“10. To bring the offence of rape within the purview of Section 376(2)(g) IPC, read with Explanation 1 to this section, it is necessary for the prosecution to prove:

(i) that more than one person had acted in concert with the common intention to commit rape on the victim;

(ii) that more than one accused had acted in concert in commission of crime of rape with pre-arranged plan, prior meeting of mind and with element of participation in action. Common intention would be action in concert in pre-arranged plan or a plan formed suddenly at the time of commission of offence which is reflected by the element of participation in action or by the proof of the fact of inaction when the action would be necessary. The prosecution would be required to prove pre-meeting of minds of the accused persons prior to commission of offence of rape by substantial evidence or by circumstantial evidence; and

(iii) that in furtherance of such common intention one or more persons of the group actually committed offence of rape on victim or victims. Prosecution is not required to prove actual commission of rape by each and every accused forming group.

11. On proof of common intention of the group of persons which would be of more than one, to commit the offence of rape, actual act of rape by even one individual forming group, would fasten the guilt on other members of the group, although he or they have not committed rape on the victim or victims.”

17. In the case of Santosh Prasad (*supra*), the Hon’ble Supreme Court examined the testimony of the victim and found that she failed to pass any of the test of “sterling witness” and found that there were variations in her version about giving the complaint. There was delay in lodging the FIR and the medical report and the FSL report were not supporting the prosecution case. Under those circumstances, the solitary version of the victim was not accepted so as to prove the prosecution case. The Hon’ble Supreme Court in para 6 of the judgment observed as below:

“6..... In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW 1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore,

when we tested the version of PW 5, prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of “sterling witness”. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix, PW 5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and the accused is to be given the benefit of doubt.”

18. In fact, in the case of Santosh Prasad (*supra*), in para 5.3, the Hon’ble Supreme Court observed as under:-

“5.3. As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy.....”

19. In the case of Mohit Tyagi (*supra*), this Court has dealt with the credibility of forensic science report and observed as follows:-

“37. So far as the conclusion of the FSL report dated 15.11.2018 is concerned, the same also does not inspire confidence for placing reliance upon it, inasmuch as the medical examination report of the accused dated 16.08.2018 clearly states that there is history of the accused having taken bath and changed clothes. Also statements of DW-1 accused need to be considered wherein he stated that the police had obtained semen from the accused under threat by repeated beating in the Chauki and thus to save himself from the further beating by police, the accused took out his semen and gave it to the police. The police has thus not been able to successfully prove that the chain of custody of the underwear which the accused was wearing at the time of incident was the same underwear which was taken into possession at the time of medical examination of the accused. Secondly, since

the accused-appellant was not confronted with the conclusions of the FSL report, the FSL report could not be relied against the accused. Hence in view of the aforesaid, the FSL report dated 15.11.2018 cannot be read against the accused/appellant and on this count too, the prosecution case is bound to fail and the conviction of the accused cannot be sustained.”

20. Learned counsel for the appellant Manish Avasthi adopts the arguments made by the learned counsel for the appellants Ashish Bijalwan, Ajay Bhatt and Vijay Shankar Nautiyal.

21. On the other hand, learned State Counsel submits that the prosecution has been able to prove its case beyond reasonable doubt; the statement of PW 2, the victim is quite credible; she has been natural in her statement; her statement is to be considered as a statement of an injured. Learned State Counsel also submits that, in fact, the prosecution has also been able to prove the charge of gang rape against the appellant Vijay Shankar Nautiyal; he also deserves to be convicted for offences under Sections 376-D read with 34, 342, 506 IPC.

22. Arguing on Government Appeal No. 71 of 2018, State v. Vijay Shankar Nautiyal, learned counsel for Vijay Shankar Nautiyal argued that the prosecution has not been able to prove its case against Vijay Shankar Nautiyal and he deserves acquittal.

23. Before arguments are appreciated, it would be apt to examine as to what the witnesses have stated.

24. PW 1 is the mother of the victim. According to her, on 03.03.2017, PW 5, a friend of her daughter (victim) came to her house early in the morning at 10:30 a.m.; they had lunch together; at

03 – 03:30 p.m. in the afternoon, PW 5, the friend of the victim had requested this witness to send the victim with her as she was all alone in her home. This witness agreed to it. Thereafter, they both left the house. PW 1 further states that the next day, there was some bereavement in their relationship, therefore, this witness left the station. When she returned, her neighbour told her that the police was looking for her. This witness called her son, who was in the market and asked about police. Her son assured her that the police might be looking for some other person. But, soon thereafter, the police made a telephone call and called her at the police station. Thereafter, this witness called PW 5, the friend of the victim and she reached the police station. The victim revealed the incident to this witness, who then lodged the report. According to this witness, the victim (her daughter) told her that she was raped.

25. PW 2 is the victim. According to her, on 03.03.2017, her friend PW 5 had visited her house early in the morning at 10-11 a.m. She stayed there till 2:30 – 3:00 p.m. and thereafter PW 5 requested the mother of the victim to send this witness along with her and with the permission of her mother, this witness joined the company of her friend PW 5. According to this witness, there she saw a photograph of her friend PW 3 on the phone of her friend PW 5. She forwarded the photograph to her friend PW 3. Thereafter, they had some conversation. PW 3, the friend of the victim told this witness that the battery of his mobile is low, let it be charged. Thereafter, PW 3, the friend of the victim came at the house of PW 5 and gave his mobile phone to this witness. He took the mobile phone of this witness and exchanged their SIMs. It was about 07:30 p.m. After an hour, this

witness went to give the mobile phone of her friend PW 3. There, her friend PW 3 requested this witness to walk for a while. They started walking, but suddenly the appellants came from opposite side. They passed comments on her. Thereafter, this witness along with her friend PW 3 sat on the stairs, but the appellants came and started *maar-peet* with her friend PW 3. The appellant Ajay Bhatt caught hold of this witness and told that he wants to have sex with her. He took her at a distance, threatened her and raped her, due to which this witness became scared. She cried also. According to this witness, thereafter, appellants Manish Avasthi and Ashish Bijalwan also came to rape her, but as soon as they tried to rape her, somebody shouted from a distance and threw stones. Thereafter, this witness ran away, but the appellants Ashish Bijalwan and Manish Avasthi also followed her. They took her on the road leading to Manpur and took her towards the path leading to Kuteti Devi and raped her one after another.

26. According to PW 2, the victim, thereafter the appellants Manish Avasthi and Ashish Bijalwan took her to Koti Village. They did not allow this witness to cry saying that they had their video and threatened her to life. Both the appellants Manish Avasthi and Ashish Bijalwan took the victim in a room in Koti Village. There, the appellant Ashish Bijalwan again raped her. The appellant Ashish Bijalwan had also taken her telephone at the place, where the appellant Ajay Bhatt had raped her. Thereafter, the appellant Ashish Bijalwan, dropped the victim in the morning of 04.03.2017 and gave her telephone, which had low battery and it was not working. PW 2, the victim in her statement states that thereafter she went to the house of her friend

PW 5 and revealed her the entire incident. Meanwhile, her friend PW 3 also reached there. Thereafter, they went to lodge the report and she lodged the report of the incident. According to PW 2, the victim, she was medically examined. She gave her clothes to the police. Their statements were also recorded before the Magistrate.

27. PW 3, the friend of the victim has corroborated the testimony of PW 2, the victim. Similarly, PW 5, friend of the victim has also supported the statement of the victim as to how the victim came to her house, how she went to meet her friend PW 3 and came early in the morning next day crying and revealed that she was raped.

28. PW 4 Maniram Nautiyal is a very important witness in this case. In fact, according to the prosecution, the incident took place near a power house. This witness was a security guard. According to him, on the day of incident, he was on duty when at about 11:00 p.m. in the night, he heard some voice of crying. He came out and called in loud voice as to who was there? He threw some stones and flashed his torch, but since there were bushes, he could not see anything. According to this witness, on the next day, through newspaper, he came to know that someone was raped. In fact, PW 4 Maniram Nautiyal supports the testimony of PW 2, the victim and her friend PW 3.

29. PW 6 Head Contable Sunil Kumar has written the chik FIR and made entry of it in the general diary.

30. PW 7 Dr. Akansha Badhani did examine the victim on 04.03.2017. She has proved her medical examination report.

31. PW 8 SI Vinod Prasad Thapliyal is the Investigating Officer. He arrested the appellants, prepared the arrest memos, got the statements of the victim recorded under Section 164 of the Code and prepared the site plans Ex. 9 and Ex. 10. He has also stated about the steps that were taken during investigation and he submitted the charge sheet.

32. It is a case of gang rape. The law is well settled that the victim of gang rape is not an accomplice. She is like an injured witness. Conviction can solely be based on her statement, if it inspires confidence. What is to be seen and what are the considerations that may be necessary to appreciate the testimony of the prosecutrix? In which cases, the corroboration may be required? What are, in fact, corroborations? Generally, it cannot be expected that offence of this kind may be done in the presence of some independent witnesses.

33. In the case of Raju *alias* Umakant v. the State of Madhya Pradesh, (2025) 8 SCC 281, the victim along with her friend was proceeding to some direction, where they were waylaid by the accused in that case. The friend of the victim ran away and thereafter, the victim was raped. These facts are given in the judgment in para 13 in the case of Raju (*supra*), which are as follows:-

“13. The case revolves around the testimony of the prosecutrix ‘R’ who was examined as PW 1. She has categorically deposed that, at around 1.00 a.m., when she and her friend ‘SA’ were returning from the wedding ceremony, they halted to attend calls of nature. Thereafter, when they were proceeding towards their house, the accused persons caught hold of them from behind. According to the prosecutrix, while the appellant Raju caught her, Jalandhar was accompanying him. PW 1 states that at the same time her friend ran away. She further states that while one caught

hold of her, the other gagged her mouth and were threatening to kill her if she raised a hue and cry. She deposed that the accused had a two-wheeler and they forcefully made her sit on the two-wheeler and took her to the house of the appellant which was in the middle of the fields. She deposed that both the appellants locked her in the room and committed wrongful act with her. She deposed that she was wearing a green-coloured sari and further stated that Jalandhar committed wrongful act by inserting his penis into her vagina. Raju also committed wrongful act by putting his penis into her vagina. Thereafter, the accused took her to Dair Salaiya on a motorcycle. The appellant took her to his house where 'LB', with whom he had a relationship, was there and locked her and after two days her father got her released from there. She further clearly deposed that she had told her parents, brother and sister-in-law about the incident, and that appellant Raju stayed with 'LB', and Jalandhar after taking keys from 'LB' took her to another house."

34. The Hon'ble Supreme Court in the case of Raju (*supra*) considered the testimony of the victim and found her reliable. In para 16 and 17, the Hon'ble Supreme Court observed as follows:-

"16. We have carefully considered the evidence of PW 1. We are convinced that notwithstanding the minor contradictions, her evidence inspires confidence and that she has clearly spoken about the accused abducting her and also committing rape on her. She has also clearly spoken about the wrongful confinement. Nothing has been elicited in the cross-examination to dilute her testimony. The charges under Sections 366, 376(2)(g) and 342IPC are clearly made out. It is now fairly well settled that the prosecutrix is not an accomplice and that if the evidence of the prosecutrix inspires confidence it can be acted upon without corroboration.

17. Not only does the evidence of 'R' sound natural, it also inspires confidence and we have no manner of doubt whatsoever that on the facts of this case, any need for corroboration can be safely dispensed with. As has been rightly observed, a woman or a girl subjected to sexual assault is not an accomplice but a victim of another person's lust and it will be improper and undesirable to test her evidence with suspicion. All that the law mandates is that the Court should be alive to and conscious of the fact that it is

dealing with the evidence of a person who is interested in the outcome of charge levelled by her and if after keeping that aspect in mind if the Court is thereafter satisfied that the evidence is trustworthy, there is nothing that can stop the Court from acting on the sole testimony of the prosecutrix. [See State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30 : 2000 SCC (Cri) 898] , Rameshwar v. State of Rajasthan [Rameshwar v. State of Rajasthan, 1951 SCC 1213] , State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210] , State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] .]

35. With regard to non-support of medical examination, the Hon'ble Supreme Court observed that even if there is no injury, it does not mean that sexual assault was not committed on the victim. The Hon'ble Supreme Court in para 30 observed that **"It is also well settled that where the ocular evidence is clear, it will prevail over the medical evidence"**. [See CBI v. Mohd. Parvez Abdul Kayuum [CBI v. Mohd. Parvez Abdul Kayuum, (2019) 12 SCC 1 : (2019) 4 SCC (Cri) 32] (para 65).].

36. In the case of State of Uttar Pradesh v. Chhotey Lal, (2011) 2 SCC 550, the principle of law has further been summed up by the Hon'ble Supreme Court in para 22 as below:-

"22. In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analysed and examined carefully. But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is a victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of the prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not

require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.”

37. In the case of Chhotey Lal (*supra*), the Hon’ble Supreme Court has also considered the position of the victim in a conservative society, which is mostly prevalent in India and in para 26, the Hon’ble Supreme Court observed as under:-

“26. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.”

38. In the case of State of M.P. v. Dayal Sahu, (2005) 8 SCC 122, also, the Hon’ble Supreme Court reiterated that the sole testimony of the prosecutrix may bring home the guilt even when the doctor is not examined or the medical report is not produced. In para 14, the Hon’ble Supreme Court observed as follows:-

“14. A plethora of decisions by this Court as referred to above would show that once the statement of the prosecutrix

inspires confidence and is accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not be fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities.”

39. Arguments have been raised on multiple aspects of the case. This Court has already noted as to what the PW 2, the victim has stated about the incident. She is categorical about each of the steps, which led to the offence. Some questions have been raised with regard to the place of incident. PW 2, the victim has stated that first the appellants made comments on them, but they proceeded ahead and sat on the stairs, which has been shown at the site plan, Ex. A-9 by letter “S-2” by the Investigating Officer. From there, the victim was taken by the appellant Ajay Bhat at a place shown by letter “D” in the site plan. But, thereafter, when the appellant Ajay Bhatt raped her, the appellants Manish Avasthi and the appellants Ashish Bijalwan also came there. But, in the meanwhile, since the victim had already raised an alarm, the security guard PW 4 Maniram Nautiyal gave a call in loud voice from his check post, which is shown by letter “P” on the site plan, Ex. A-9. This site plan also shows as to in which direction the victim ran and thereafter she was again raped by the appellants

Ashish Bijalwan and Manish Avasthi at a place, which has been shown with letter “X-2” and “X-3”. It is, in fact, the pictorial description given by the victim as to how she was chased and raped. But, the things did not stop here. According to the victim, thereafter the appellants Ashish Bijalwan and Manish Avasthi took her in Koti Village, where in a room, the appellant Ashish Bijalwan again raped her. This place has been shown as “X-4” by the Investigating Officer in the site plan, Ex. A-10. This is what the victim has stated.

40. PW 2, the victim in para 20 of her statement has stated that the appellant Ajay Bhatt took her at the bank of the river and raped her. This is the point “D”, which has been shown in the site plan, Ex. A-9, where the appellant Ajay Bhatt raped the victim at the bank of the river Bhagirathi. On the North of the place of incident, there is a river, on the East and South of the place of incident, there is a power house and its land and on its West, there is a bridge, as is shown in the site plan and is stated by PW 2, the victim. The place of incident is much established. There is no doubt at all in the testimony of PW 2, the victim and in the testimony of PW 3, the friend of the victim, with regard to the place of incident. It is supported by the site plans.

41. Arguments have been raised with regard to the timings as to when did PW 2, the victim joined the company of her friend PW 5 and when after the incident, she came back at the house of her friend PW 5.

42. In their statements PW 1, the mother of the victim, PW 2, the victim, PW 3, the friend of the victim and PW 5, the friend of the

victim have stated about timings. According to the prosecution case, PW 5, the friend of the victim had come to the house of PW 1, the victim on 03.02.2017 at 10-10:30 in the morning and after having lunch, she had requested that PW 2, the victim could join her company and thereafter, PW 2, the victim left her home along with PW 5, her friend at about 03:00 p.m. There is no difference in the timing. According to PW 1, mother of the victim, they left between 03-03:30 p.m., whereas according to PW 2, the victim, they left about 02:30-03:00 p.m. and according to PW 5, the friend of the victim, they left the house after having lunch.

43. When the friend of the victim i.e. PW 3 came to the house of PW 5, regarding this, PW 2, the victim says that he came at about 07:30-07:45 p.m. to give his phone. The PW 3 has also stated that he had come to give his phone at 07:30-08:00 p.m. According to PW 3, the friend of the victim, at 08:45 p.m., the victim had come to give his phone, whereas according to PW 5, the friend of the victim, at 09:00 in the night, the victim had gone to give phone to her friend PW 3. The variation in the statements is very negligent. It is natural variation.

44. As to when PW 2, the victim came to the house of her friend PW 5 on the next day morning? According to PW 2, the victim at 4-5 a.m. in the morning, on 04.03.2017, she returned to the house of her friend PW 5. The victim's friend PW 5 in her statement has also stated that at 6-7 a.m. in the morning, the victim returned to her house.

45. There is slight variation as to when did the friend of the victim, PW 3 reach in the house of her friend PW 5 on 04.03.2017. According to PW 2, the victim, at 10-11 p.m. on 04.03.2017, PW 3, the friend of the victim came to the house of her friend PW 5, whereas PW 3, friend of the victim says that he came at 05:00 a.m. in the morning. In para 35 of his statement, PW 3 says that he did not reach in the house of PW 5 at 10-11 a.m. According to PW 5, the friend of the victim, PW 3 had reached her house at 07:30 in the morning and thereafter they left.

46. There is no significant variation in the timings as to what happened when. The statements of the witnesses are quite connected to each other. They corroborate and support the statements of each other. The arguments made on this aspect have less merit for acceptance.

47. The main argument has been raised with regard to the identity.

48. The FIR in the instant case is named. In her statement recorded under Section 164 of the Code, the victim has stated as to how the appellants or each one of them acted with her. In her examination in the court, the victim tells that she knew the appellant Vijay Shankar Nautiyal from before. She identified all the appellants in the court, those, who did the wrongful act with her. It is a case of dock identification. PW 3, the friend of the victim has stated that he knew the appellants Ajay Bhatt and Ashis Bijalwan. According to him, he did not know the appellant Manish Avasthi from before, but the other appellants were calling him by his name, therefore, he knew him. In

para 29 of his statement, PW 3, the friend of the victim tells that there were light coming from the electric pole, when the incident took place.

49. PW 2, the victim knew the appellant Vijay Shankar Nautiyal from before. PW 3, the friend of the victim knew the appellants Ajay Bhatt and Ashish Bijalwan from before. He could identify the appellant Manish Avasthi, as the other appellants were calling him by his name. Moreover, PW 2, the victim has identified all the four appellants in the court.

50. It is a case of dock identification. Dock identification is a substantive piece of evidence. In the case of *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1, the Hon'ble Supreme Court has discussed the law on this point and in para 256, summed up the principle as follows:-

“256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

Munshi Singh Gautam v. State of M.P. [(2005) 9 SCC 631 : 2005 SCC (Cri) 1269] : (SCC pp. 642-45, paras 16-17 & 19)

“16. As was observed by this Court in *Matru v. State of U.P.* [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See *Santokh Singh v. Izhar Hussain* [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses

based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See *Kanta Prashad v. Delhi Admn.* [AIR 1958 SC 350 : 1958

Cri LJ 698] , *Vaikuntam Chandrappa v. State of A.P.* [AIR 1960 SC 1340 : 1960 Cri LJ 1681] , *Budhsen v. State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] and *Rameshwar Singh v. State of J&K* [(1971) 2 SCC 715 : 1971 Cri LJ 638] .)

.....
.....”

51. PW 2, the victim and PW 3, the friend of the victim had immense opportunity to identify the appellants. In fact, three of the appellants were known to both of them. With regard to the appellant Manish Avasthi, PW 3, the friend of the victim says that the appellants were calling each other by their names and therefore, he could identify the appellant Manish Avasthi.

52. In this background, the suggestions given on behalf of the appellants are very interesting. PW 2, the victim was given suggestion that the appellant Vijay Shankar Nautiyal scolded her for walking in the night, therefore, she lodged false report (Para 12 of the statement of PW 2, the victim). In para 24 of her statement, PW 2, the victim was given suggestion that when she was in objectionable position with her friend PW 3, the appellants made them to understand and therefore the appellants have falsely been implicated.

53. Does not it imply that the appellants are impliedly establishing their presence at the place of incident? In fact, this suggestion was also given to PW 3, the friend of the victim, when in para 11, he was suggested that since the victim and this witness were roaming all around and the appellants stopped them to walk in the night, they have falsely been implicated. Does not this suggestion impliedly establish the presence of the appellants at the place of the incident.

54. In the instant case, three of the appellants were known to PW 2, the victim and PW 3, the friend of the victim. In particular, the appellant Vijay Shankar Nautiyal was known to PW 2, the victim and appellants Ajay Bhatt and Ashish Bijalwan were known to PW 3, the friend of the victim. They have stated that the appellant Manish Avasthi was being named by other appellants. Moreover, PW 2, the victim and PW 3 had the opportunity to see the faces of the appellants at the place of the incident, as there was electric light at the place of incident and PW 2, the victim has identified all the appellants in the court. She has not been cross-examined particularly on this aspect so as to raise any doubt on her testimony. The prosecution has been able to establish the identity of the appellants that it is they, who did the wrongful act with PW 2, the victim.

55. It is argued that there is no injury on the person of the victim, therefore, it makes the prosecution case doubtful. This Court has already referred to various case laws, wherein the Hon'ble Supreme Court has held that in all cases of rape, it is not necessary that a victim could sustain injuries. It depends upon the facts and circumstances of the case. In the instant case, the background has to be kept in mind. The victim, was walking with PW 3, her friend late in the evening. They were suddenly attacked by the appellants. In para 3 of her statement, PW 2, the victim has stated that she raised an alarm when the appellant Ajay Bhatt had told her that he wants to have sex with her. She was scared as well. She had no occasion to resist. Her friend was being beaten up by the appellants. One of the appellants, namely, Ajay Bhatt was raping her. She cried. She did what she could have done. Although, in para 16 of her statement,

PW 2, the victim has stated that she did not sustain any injury, but again she tells that, in fact, she had sustained some injuries but she did not reveal it to the doctor because she was quite afraid then. She concealed her injuries (statement of PW 2 at para 42 also). According to PW 2, the victim, she had no knowledge that the doctor was to be told about the injuries. According to her, when she was sexually assaulted, she was inflicted with *Kandali (Stinging Nettle/Bichu Ghas)* (Para16 of the statement). She is categorical in her statement that she sustained injury on her chest and the doctor did not examine the injury on her person.

56. In all cases of sexual assault, it may not be necessary that the victim could sustain any external injury. As stated and discussed, it depends upon various factors. In the instant case, PW 2, the victim has stated that she resisted initially when the appellant Ajay Bhatt tried to rape her. She raised an alarm also, but she was subsequently overpowered. She was scared. She had no occasion to resist any further. But, it does not doubt her credibility.

57. In the case of *Deepak Kumar Sahu v. State of Chhattisgarh*, 2025 SCC OnLine SC 1610, the Hon'ble Supreme Court has observed that mere absence of injury marks, in all cases, may not doubt the testimony of the victim. The Hon'ble Supreme Court observed as follows:-

“5.5.4. It may be true that in the present case the evidence of the medical officer (PW-17) spoke about absence of external injury marks on the genitals of the victim. However, the proposition that the corroboration from the medical evidence is not sine qua non when the cogent evidence of the victim is available, was reiterated in a recent judgment of this Court in *Lok Mal alias*

Loku v. State of Uttar Pradesh, [(2025) 4 SCC 470], observed:

“Merely because in the medical evidence, there are no major injury marks, this merely cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution.”

58. Similarly, in the case of Chootey Lal (*supra*), the Hon’ble Supreme Court discussed the aspect of injury on the external and internal part of the body of the victim and held that in all cases, it is not necessary that the victim in the case of sexual assault without her consent would sustain some kind of external or internal injury. In para 32, the Hon’ble Supreme Court observed as follows:-

“32. Although the lady doctor, PW 5 did not find any injury on the external or internal part of the body of the prosecutrix and opined that the prosecutrix was habitual to sexual intercourse, we are afraid that does not make the testimony of the prosecutrix unreliable. The fact of the matter is that the prosecutrix was recovered almost after three weeks. Obviously the sign of forcible intercourse would not persist for that long a period. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal parts of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear.”

59. Merely because there have been no injury on the person of the victim, the credibility of the statement of PW 2, the victim does not become doubtful in the present case.

60. It is argued on behalf of the appellants that there is no scientific evidence in terms of pathological report or forensic report that any sexual assault was done on the victim.

61. Each case has its own facts. In the instant case, PW 2, the victim has stated that after the incident, when she returned to the house of her friend PW 5, she bathed and thereafter a report was lodged in the evening.

62. In the case of State of H.P. v. Lekh Raj and others, (2000) 1 SCC 247, the Hon'ble Supreme Court in para 5 observed as follows:-

“5..... This Court in *State of Maharashtra v. Chandraprakash Kewalchand Jain* [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] relying upon medical evidence observed that “spermatozoa can be found if the woman is examined within 12 hours after intercourse, thereafter they may be found between 48 and 72 hours but in dead form”. If the prosecutrix washes herself by then, the spermatozoa may not be found. In that case the Court after satisfying itself regarding the presence of semen on the clothes of the prosecutrix held that “the absence of semen or spermatozoa in the vaginal smear and slides, cannot cast doubts on the creditworthiness of the prosecutrix”.

63. In the case of State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550, the Hon'ble Supreme Court on this aspect observed as follows:-

“25.....The evidence of PW 3 Dr Vijaya Lele shows that she had taken the vaginal smear and the slides on August 23, 1981 at about 1.30 p.m. i.e., almost after 24 hours. The witness says that spermatozoa can be found if the woman is examined within 12 hours after intercourse, thereafter they may be found between 48 and 72 hours but in dead form.

Shamimbanu may have washed herself by then. Therefore absence of spermatozoa cannot discredit her evidence.”

64. In the case of Vishal Gopichand Tilore Vs. The State of Maharashtra and Ors, MANU/MH/3266/2021, the Hon’ble Bombay High Court observed that **“It is also pertinent to note that the prosecutrix has deposed that she had washed herself before she was medically examined. Hence, absence of semen on vaginal swabs is not the evidence of absence of sexual intercourse.....”**
(Para 22).

65. In the medical examination report that has been proved by the prosecution, which is Ex. A-4, it records that the LMP was 02.03.2017. As per the prosecution case, the next day, the act was committed on the PW 2, the victim, which means that PW 2, the victim was menstruating when the incident took place.

66. In the case of Guntuboyina Gangulu Vs. State of Andhra Pradesh, MANU/AP/0093/1993, in para 9, the Hon’ble Andhra Pradesh High Court observed that **“Generally, and the medical evidence in this case supports the view that during menstrual period, it is very difficult to find out the traces of spermatozoa on the private parts of the victim. Moreover, mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape”**.

67. In the case of Dharampal Singh vs. State of NCT of Delhi, (Crl. A. No. 567/2008), the Hon’ble Delhi High Court observed that **“Since the prosecutrix (PW-2) was menstruating, when this**

incident took place, therefore, medical evidence is hardly of any relevance”.

68. In the instant case, PW 2, the victim was menstruating when allegedly the rape was committed on her. She had bathed before her medical examination. Therefore, even if spermatozoa was not found in her smear slides, it does not doubt the credibility of the statement of PW 2, the victim.

69. It is argued that the conduct of PW 3, the friend of the victim, is not natural and so is the conduct of PW 5, the friend of the victim. It is argued that if the incident had occurred at 9-10 p.m. and the victim and her friend were assaulted, why PW 3, the friend of the victim did not lodge the report to the police? Why did he go to home and sleep? Similarly, it is argued that when the victim did not return home after 09:00 p.m., why her friend PW 5 did not make search for her and inform her parents? Why the FIR was lodged next day?

70. This argument relates to the human response to a particular situation. Both PW 2, the victim and PW 3, the friend of the victim have stated that after the incident, they were much afraid and scared. In fact, they had raised alarm, but thereafter when torch light was flashed and stones were pelted on their crying, they were separated. PW 3, the friend of the victim looked for the victim for a while and thereafter he returned. He tells that he was scared then. In para 2 of the statement of PW 3, the friend of the victim states that next day morning they met. In fact, according to PW 3, the friend of the victim, he persuaded the victim to lodge the report. According to him, the victim was not agreeable to lodge the report. In the evening

FIR was lodged. The FIR is not delayed. The conduct of PW 2, the victim, PW 3 and PW 5, does not, in any manner, doubt the prosecution case.

71. In the instant matter, forensic science report is available, but it is not put to any of the appellants under Section 313 of the Code. Therefore, it may not be read into evidence.

72. In view of the foregoing discussions, this Court is of the view that the court below has rightly convicted and sentenced the appellants by the impugned judgment and order. The judgment and order passed by the court below does not warrant any interference. Consequently, both the criminal appeals fail and deserve to be dismissed.

73. In so far as acquittal of Vijay Shankar Nautiyal for offences under Section 376-D read with 34, 342 and 506 IPC is concerned, on behalf of the State, it is argued that he had also common intention in the commission of rape upon the victim.

74. On the other hand, on behalf of Vijay Shankar Nautiyal, it is argued that he deserves acquittal. This Court has already held that the conviction of the appellants is in accordance with law.

75. The sequel of the evidence is to be seen. When PW 2, the victim and PW 3, her friend were walking, according to the prosecution case, which has been proved also, the appellants attacked them. Thereafter, the appellant Ajay Bhatt took the victim and raped her. Subsequent to it, according to the prosecution case, which has been established also that the appellants Ashish Bijalwan and Manish Avasthi went to rape the victim, but meanwhile there

were pelting of stones and torchlight from above, due to which they dispersed. Thereafter, Vijay Shankar Nautiyal did not chase the victim. He went on other side. It is only the appellants Ashish Bijalwan and Manish Avasthi, who took the victim and raped her, once in the pathway and thereafter in a room at Koti village. Vijay Shankar Nautiyal was nowhere near them.

76. The impugned judgment rightly records that had Vijay Shankar Nautiyal wanted to rape the victim, he would have followed the appellants Ashish Bijalwan and Manish Avasthi. He did not go in that direction. Therefore, Vijay Shankar Nautiyal has been convicted only for the offence under Section 323 read with 34 IPC. It is with regard to *maar-peet*, which he has done with PW 3, the friend of the victim. He did not follow the victim, he did not go to Koti village. He ran away after the *maar-peet*. Therefore, acquittal of Vijay Shankar Nautiyal under Sections 376-D read with 34, 342, 506 IPC has rightly been recorded by the court below, which does not warrant any interference. Accordingly, the Government Appeal also deserves to be dismissed.

77. Accordingly, Criminal Appeal No. 161 of 2018 and Criminal Appeal No. 205 of 2018 are dismissed.

78. The Government Appeal No. 71 of 2018 is dismissed.

79. Let a copy of this judgment along with lower court record be forwarded to the court concerned for onward compliance.

(Siddhartha Sah, J.)
09.06.2026

(Ravindra Maithani, J)
09.06.2026